

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13356 of 2024

M/s Shanti Construction a registered partnership Firm having its office at Jay Prakash Nagar, Karma Road, Aurangabad, P.S. Town, District- Aurangabad through its Partner Shri Ashu Abhinaw, Male, aged about 39 years, Son of Sri Vishwanath Prasad, Resident of Jay Prakash Nagar, Karma Road, Aurangabad, P.S. Town, District - Aurangabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer In-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Chief Engineer, (South) Road Construction Department, Government of Bihar, Patna.
5. The Chief Engineer, (North) Road Construction Department, Bihar, Patna.
6. The Executive Engineer, Road Division - 1, Aurangabad, Road Construction Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate
For the Respondent/s : Mr.Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 09-09-2024 The petitioner is concerned with the cancellation of

a tender, as seen from Annexure-P/13.



2. Three contentions are raised by the learned Counsel for the petitioner against the cancellation. First, earlier the very same tender was cancelled because there was only a single tenderer after the financial bid was opened. No such objection was taken at that point of time. The second contention is that, in fact at the point of pre-bid meeting, the petitioner had pointed out the anomaly, which has now led to the cancellation; which, the Authority ignored and proceeded with the opening of the bids. The third contention is that in some other contracts despite amendments being done, they have proceeded with the matter, which shows it is not mandatory that the amendments should necessarily result in cancellation of a tender.

3. Learned Advocate General submits that re-tender has already been issued.

4. We have been given a translated copy of the cancellation order produced as Annexure-P/13. We extract the following :-

“By the Departmental Memorandum-Q-7/Rule-1-05/2023-1229(E). Dated-4.03.2024 it has been directed that "MoRTH makes certain amendments in the provisions of Model EPC from time to time through various channels. These amendments are not to be incorporated in the Model EPC till an official order to that effect is issued after review of these amendments.



But after review of the technical bid received through relevant letter (i) there are the following differences between the Model RFP and uploaded RFP :-

(i) In Clause 1.2.2, Bid Validity is mentioned as 180 days instead of 120 days.

(ii) In Clause 2.2.2.2 the Threshold Technical Capacity 0.75 time of estimated project cost has been written instead of 1 time of estimated project cost has been taken.

(iii) In Clause 2.2.2.3 (ii) 20% of estimated project cost has been replaced by 15% in Average Annual Turnover.

(iv) In Clause 2.2.2.5 there is difference in Categories description under Categories and factors for evaluation of Technical Capacity.

(v) In clause 2.2.2.6 (ii) amount 10% of estimated project cost has been replaced by 05%.”

5. It is for the Authority to decide as to whether the amendments would be relevant or significant, to result in a cancellation. Merely because another tender has been proceeded with, will not result in the Authority taking the very same stand in all the tenders published; since it is a technical matter which has to be looked into and ascertained as to whether the amendments are so critical and significant as to result in cancellation.

6. We find absolutely no reason to interfere with the cancellation which has been made by the Authority on



sufficient reasons.

7. We dismiss the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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